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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,092	02/23/2005	Toshiaki Kimura	OGA-013	3275
20374 7590 05/15/2008 KUBOVCIK & KUBOVCIK SUITE 1105 1215 SOUTH CLARK STREET ARLINGTON, VA 22202				
EXAMINER TOSCANO, ALICIA				
ART UNIT		PAPER NUMBER		
1796				
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05/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,092

Applicant(s)

KIMURA ET AL.

Examiner

Alicia M. Toscano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 5-11, 13, 15, 16, 19, 20, 21, 23 and 26- 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (JP 2001-131827, English translation provided) in view of Tan (WO 0212395, US 6710135 is used as an Equivalent English document) and in further view of Kondo (US 5593778) and Zeitler (US 5811508).

This rejection is as set forth in the action dated 12/21/07. See remarks below.

2. Claims 1, 3-11, 13, 15, 16, 19, 20, 21, 23 and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Obuchi (US 6417294) in view of Tan (WO 0212395, US 6710135 is used as and Equivalent English document) in further view Kondo (US 5593778) and Zeitler.

This rejection is as set forth in the action dated 12/21/07. See remarks below.

3. Claims 13, 15, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura, Tan, Zeitler and Kondo or Obuchi, Tan, Zeitler and Kondo, in further view of Anderson (US 4009513).

This rejection is as set forth in the action dated 12/21/07. See remarks below.

4. Claims 12, 14, 17, 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura, Tan, Zeitler and Kondo or Obuchi, Tan, Zeitler and Kondo in view of Yamakita (US 2003/0079297).

This rejection is as set forth in the action dated 12/21/07. See remarks below.

Conclusion

Response to Arguments

5. Applicant's arguments filed 3/21/08 have been fully considered but they are not persuasive. Applicant argues a person of ordinary skill would not have a reasonable expectation of success of production of said fibers. Applicant argues properties resulting from specific fatty acid amides according to the present invention is not suggested nor disclosed in the prior art of record, nor would said properties be reasonably expected. Applicant argues Nishimura fails to disclose the "fatty acid bisamide....having a melting point of 100C or higher" and that Zeitler discloses polyethylene terephthalate, not polylactic acid and since the acid end group concentration and durability differs largely depending on the kind of polymer that said combination with Zeitler is improper. Applicant argues the declaration submitted shows unexpected results of the use of etheylenebis(streamamide), overcoming the primary references of Obuchi and Nishimura and that this deficiency is not remedied by the other references.

The Examiner disagrees. It is unclear why one would not have a reasonable expectation of success to form the composition of Nishimura or Obuchi into a lower dtex fiber. Applicant has not supported said argument and the Examiner is thusly not persuaded since Kondo discloses motivation to form thinner fibers in order to form a softer end product.

Regarding the declaration and Applicant's assertion of unexpected results of specific fatty acid amides, this is not persuasive because Applicant's claims are not commensurate in scope with said specific fatty acid amides. As written Applicant's claims read on the various bisamides of the prior art including, but not limited to, the ethylene bis-oleic amide (Nishimura), ethylenebislauramide and hexamethylenebisoleamide (Obuchi), as set forth previously. Applicant is invited to show unexpected properties from specific fatty acid amides in relation to that disclosed by Obuchi and Nishimura and in the advent of a showing of unexpected results the claims would be required to be commensurate to those specific examples for which unexpected results were shown. Since Applicant's claims are not commensurate in scope with the declaration Applicant's arguments drawn to the novelty of said claims is found moot. To properly show unexpected properties/results the Examiner requests data of those fatty acid amides and bisamides disclosed in the prior art and whichever specific fatty acid amides Applicant deems as inventive. If a broad category of bisamides is desired the Examiner requests a showing of the wide range of bisamides within said category. Applicant's claims will be required to be limited to those shown.

Regarding Nishimura's failings to teach the fatty acid bisamide, the fatty acid set forth by Nishimura, ethylene bisoleic amide, meets the melting point requirements (140C) of the claims, and it is thusly unclear to the Examiner what Nishimura does not meet in the recitation quoted by Applicant. Clarification is required.

Regarding Zeitler, Applicant has only theorized that the difference in polyester backbone chemistry would not result in the acid group teachings set forth previously by the Examiner. The Examiner does not find such assertions persuasive. The Examiner put forth a teaching that the number of carboxyl groups of the polymer is directly related to hydrolysis. Though different backbones may hydrolyze at different rates due to the chemical make-up said direct relationship between number of carboxyl groups and hydrolysis provides proper motivation to manipulate the carboxyl groups on a polyester chain. The Examiner requests evidence to the contrary.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Toscano whose telephone number is (571)272-2451. The examiner can normally be reached on M-F 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMT

/Randy Gulakowski/
Supervisory Patent Examiner, Art Unit 1796

